UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Lanette Rae Heitzman,

Plaintiff,

v.

SCOTT ENGELSTAD, Gilbert Police Department, Badge #702, In his individual capacity acting under color of law as a Gilbert police officer, TY TECHAR, Gilbert Police Department, Chief, In his individual capacity acting under color of law as a Gilbert police officer, and CITY OF GILBERT, A government entity and political subdivision of the state of Minnesota,

Defendants.

Civ. No. 12-CV-2274 (MJD/LIB)

DEFENDANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On November 17, 2014, the above-entitled matter came before the Honorable Michael J. Davis, Chief Judge of the United States District Court for the District of Minnesota, for a court trial at the United States Courthouse in Minneapolis, Minnesota. Presentation of evidence concluded on November 19, 2014, final arguments were heard on February 4, 2015, and the matter was taken under advisement. Attorney David Izek appeared on behalf of Plaintiff Lanette Rae Heitzman. Attorneys Pamela L. VanderWiel and Anna L. Yunker appeared on behalf of Defendant Scott Engelstad.

NOW, THEREFORE, after consideration of the evidence presented, the files and memoranda in this matter, the arguments of the parties, and the applicable law, the Court makes the following:

FINDINGS OF FACT

1. This case arises out of an incident that occurred on July 19, 2012 at 4731 Differding Point Road in Eveleth, Minnesota.
2. On that date, Defendant Scott Engelstad was a police officer for the City of Gilbert ("City").
3. Engelstad was hired by the City in October 1998, and he retired in August 2012.
4. Plaintiff Lanette Rae Heitzman, owns a cabin at 4731 Differding Point Road, in Eveleth, Minnesota ("the cabin"). The City of Gilbert provides police service to this area.
5. Heitzman and her husband are residents of Kingman, Arizona. They have owned the cabin for approximately ten years and spend, on average, about four weeks per year at the cabin.
6. Up to the time of the arrest, Engelstad had never met Heitzman. Engelstad had, however, met several members of the Heitzman's extended family and Engelstad's wife was once married to Heitzman's brother.
7. On the morning of July 19, 2012, Heitzman spent several hours mowing the grass at the cabin, and at the adjoining property owned by her parents, with a riding lawnmower.

8. Heitzman also mowed grass and brush growing in a public ditch on both sides of the highway. There was no bag on the lawnmower, and grass clippings were being shot into the road.

9. Catherine Leece, a neighbor who has lived on Differding Point Road for approximately twenty years, saw Heitzman mowing the grass. Leece had never met Heitzman before and did not know who she was.

10. Leece, who was riding a bicycle, stopped to speak with Heitzman because she was concerned about the grass clippings Heitzman was depositing on Differding Point Road. Approximately a week or two earlier, Heitzman's husband had mowed the grass in the public ditch and had left piles of clippings on the road. Leece did not want the clippings left on the road again because she believed they would clog a nearby culvert and cause flooding.

11. The conversation was not cordial. Heitzman told Leece that she was making the property look better, and that she intended to keep mowing. Heitzman did not tell Leece that she intended to clean up the clippings. Leece told Heitzman that she was going to report the clippings to the City.

12. At approximately 11:43 a.m., Leece called 911 to complain about the grass clippings Heitzman was depositing on Differding Point Road. Leece did not know who Heitzman was, so she did not give Heitzman's name to the 911 operator.

13. The 911 operator sent a dispatch to the Gilbert Police Department. Chief of Police Ty Techar and Defendant Officer Engelstad were on duty on the morning of July 19, 2012 and received the dispatch. The text of the dispatch read: "Person is

'defacing public property' with a lawn mower." The dispatch did not identify Lanette Heitzman as the subject of the complaint. The dispatch identified the location as Sparta Beach, rather than the cabin's address.

14. Engelstad took the call. As he drove down Differding Point Road toward Sparta Beach, he noticed a long row of grass clippings lining both sides of the road.

15. As he approached 4731 Differding Point Road, Engelstad saw a woman sitting on the steps of a cabin on the property. The woman sitting on the steps was Plaintiff Lanette Heitzman, though Engelstad did not know that at the time. Heitzman was talking on her cell phone to her mother. Heitzman was telling her mother about her interaction with Leece, because she expected that Leece was going to complain to the City.

16. When Engelstad saw Heitzman, he called the complainant to get a description of the subject of the complaint. The description provided by Leece matched the description of the woman sitting on the steps.

17. Heitzman had seen Engelstad drive by. She said to her mother, "You won't believe this Ma, but the police are here." Heitzman walked to the side of the road and waited for the police car to come back.

18. Engelstad, having confirmed that the woman on the steps matched the description of the subject of the complaint, turned and drove back to the cabin. He pulled up alongside Heitzman.

19. After parking, Engelstad exited his squad car. Heitzman and Engelstad had never met one another in person before. Neither recognized the other.

20. Heitzman knew Engelstad had come to address the grass-clipping complaint. As soon as Engelstad got out of his squad car, Heitzman said, “Really? I can’t mow on my own property?”

21. After a short exchange about the grass clippings, Heitzman said that she wanted to see Engelstad’s supervisor. Engelstad called Techar and asked him to come to the scene.

22. Engelstad’s intention, upon arriving at the scene, was to tell Heitzman to clean up the clippings. He expected that Heitzman would agree, and that the issue would be resolved. Once Heitzman asked for his supervisor, however, Engelstad planned to wait until Techar arrived before engaging with Heitzman any further.

23. At no point during her conversation with Engelstad did Heitzman indicate that she would clean up the grass clippings.

24. After Engelstad called Techar and told Heitzman that Techar was on his way, Heitzman said that she would wait inside the cabin. Engelstad told Heitzman that she needed to stand by the car until Techar arrived. Heitzman repeated that she was going to wait in the cabin and began to walk away, toward the cabin. Engelstad threw his notebook to the ground near his feet and said, “Damn it, lady, I told you, you need to stay by the squad.”

25. Heitzman continued to walk toward the cabin. Engelstad followed, telling her several times that she needed to stop and return to the squad car.

26. Engelstad did not understand why Heitzman would not return to his squad car, and he found her behavior confusing. At no point did Heitzman explain to Engelstad

why she wanted to go inside the cabin, and she did not appear to be afraid. Heitzman did not identify herself to Engelstad or tell him she knew who he was.

27. When Heitzman reached the steps to the cabin, she put her foot on the first step. Engelstad took her by the right elbow and told her she was under arrest. Heitzman tried to pull away from Engelstad's grasp.

28. Engelstad put Heitzman into a control hold, with her right arm behind her back, and escorted her to a vehicle parked nearby.

29. Heitzman was still on the telephone with her mother. She told her mother that she was under arrest and that her mother should call 911.

30. Engelstad leaned Heitzman against the hood of the car, took her hands behind her back, and handcuffed her. Neither Heitzman's head nor her face came in contact with the vehicle when Engelstad leaned her against the hood.

31. After putting Heitzman in handcuffs, Engelstad escorted her to his squad car and helped her into the back seat.

32. Shortly after Engelstad put Heitzman in his squad car, Chief Techar arrived, followed by Lonnie Gulbranson and Sherwin Heitzman, Heitzman's cousin and husband, respectively.

33. Techar spoke briefly to Heitzman. Heitzman mentioned that it was hot in the car, and Techar turned the air conditioning up.

34. Lonnie Gulbranson also talked to Heitzman while she was in the squad car. Heitzman complained that her handcuffs were too tight. Gulbranson relayed this message to Engelstad, and Engelstad loosened the handcuffs.

35. Heitzman admitted at trial that at no time during the handcuffing did she indicate that Engelstad was hurting her or that she was unusually susceptible to injury.

36. Heitzman also admitted at trial that she spoke with Chief Techar, Sherwin Heitzman, and Lonnie Gulbranson, but she did not tell any of them that Engelstad had slammed her against a car or shoved her face into the hood. With the exception of saying that her handcuffs were hurting her, Heitzman did not complain of any pain or injuries.

37. Jailor Chelsea Trucano saw Heitzman approximately half an hour later, but did not observe any injuries. Later that night, Heitzman went to St. Luke's Hospital, where she was treated for an infection. Though medical records indicate that Heitzman reported having been handcuffed, there is no mention that Heitzman had any observable bruising or complained about being injured.

38. The report from St. Luke's Hospital also indicates that Heitzman said that she was handcuffed and sat in a hot car for a long time, but there is no report that she complained of being treated roughly in any way.

CONCLUSIONS OF LAW

On June 25, 2014, the Court issued an Order granting in part Defendants' motion for summary judgment. (June 25, 2014 Order at 29-30 [Doc. No. 97].) Among the claims that were dismissed were Heitzman's false arrest claims. Following that Order, the only claims that remained for trial are Heitzman's excessive force, battery, and negligence claims against Engelstad. The remaining issues before the Court are: (1) whether Engelstad used excessive force to arrest Heitzman; (2) whether Engelstad committed a battery when he arrested Heitzman; and (3) whether Engelstad was negligent when he used force to arrest Heitzman. Based on the Court's factual findings, Engelstad is entitled to judgment in his favor because, as a matter of law, Engelstad did not use excessive force, did not commit a battery, and did not act negligently.

I. ENGELSTAD'S USE OF FORCE WAS OBJECTIVELY REASONABLE.

An officer's use of force is constitutional when it is objectively reasonable under the circumstances. *E.g.*, *Brown v. City of Golden Valley*, 574 F.3d 491, 496 (8th Cir. 2009). The reasonableness of an officer's use of force is "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). When evaluating a particular use of force, courts consider the totality of the circumstances, including factors such as, "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.*

Applying handcuffs to an arrestee is objectively reasonable, even when the arrestee is not resisting, the crime at issue is minor, and the officer has no specific reason to believe the arrestee is dangerous. *Cavataio v. City of Bella Villa*, 570 F.3d 1015, 1017, 1020 (8th Cir. 2009) (holding that officer did not violate Fourth Amendment by handcuffing 75-year-old, non-resisting suspect during arrest for failing to remove debris in violation of city ordinance). Not only is it objectively reasonable, but applying handcuffs is "standard practice" and an "inherent necessity . . . in the context of an arrest." *Orsak v. Metro. Airports Comm'n Airport Police Dep't*, 675 F. Supp. 2d 944, 957

(D. Minn. 2009); *see also Muehler v. Mena*, 544 U.S. 93, 99 (2005) (describing handcuffs as a "marginal intrusion"); *Atwater v. City of Lago Vista*, 532 U.S. 318, 354-55 (2001) (concluding that arrest for failure to wear seatbelt did not violate Fourth Amendment, and noting that handcuffing is part of "the normal custodial arrest"). The Court has already determined that Engelstad had probable cause to arrest Heitzman. (Summ. J. Order at 10-11 [Doc. No. 97].) Engelstad's act of placing Heitzman in handcuffs is not, in itself, sufficient to support an excessive force claim. *See Cavataio*, 570 F.3d at 1017, 1020.

The remaining question, therefore, is whether Engelstad used more force than necessary to handcuff Heitzman. "Handcuffing inevitably involves some use of force, and it almost inevitably will result in some irritation, minor injury, or discomfort where the handcuffs are applied. To prove that the force applied was excessive in that context, a plaintiff must demonstrate something more." *Chambers v. Pennycook*, 641 F.3d 898, 906 (8th Cir. 2011); *see also Blazek v. City of Iowa City*, 761 F.3d 920, 924 (8th Cir. 2014) (noting that officer that "grabbed plaintiff's arm, twisted it around plaintiff's back, jerking it up high to the shoulder and then handcuffed plaintiff as plaintiff fell to his knees screaming" used "a relatively common and ordinarily accepted non-excessive way to detain an arrestee"). Heitzman has not demonstrated "something more." There is no evidence that Engelstad used more than a reasonable amount of force to effectuate the handcuffing. There is no evidence that Engelstad handled Heitzman roughly or slammed her head against the car hood. Even if her head had hit the vehicle, there is no evidence that it was intentional or that Engelstad even noticed. Unintentional conduct may constitute a tort, but it does not necessarily violate the Fourth Amendment. *Brower v. Cnty. of Inyo*, 489 U.S. 593, 596 (1989); *Lawyer v. City of Council Bluffs*, 361 F.3d 1099, 1105 (8th Cir. 2004) (use of pepper spray not excessive force when officer did not intend to spray the plaintiff); *Atak v. Siem*, No. 04-CV-2720 (DSD/SRN), 2005 WL 2105545, at *1-4 (D. Minn. Aug. 31, 2005) (where officer inadvertently shot the plaintiff with a handgun, the issue was not whether the use of deadly force was reasonable, but whether the officer intended to seize the plaintiff with deadly force). For these reasons, Heitzman's use of force claim fails on the merits.

II. ENGELSTAD IS ENTITLED TO QUALIFIED IMMUNITY.

Engelstad's actions are also protected by qualified immunity. Qualified immunity is an affirmative defense that "shields a government official from liability and the burdens of litigation in a § 1983 action for damages unless the official's conduct violated a clearly established constitutional or statutory right of which a reasonable official would have known." *Chambers*, 641 F.3d at 904 (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982)). Courts cannot define "clearly established law" at a "high level of generality." *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2023 (2014). Rather, "existing precedent must have placed the statutory or constitutional question . . . beyond debate." *Id.*; *Blazek*, 761 F.3d at 924 (noting "the more robust version of [qualified immunity] espoused recently by the Supreme Court").

A thorough review of case law in the Eighth Circuit fails to uncover any authority that placed the issue of the lawfulness of Engelstad's actions beyond debate. *See, e.g.*, *Blazek v. City of Iowa City*, 761 F.3d 920, 923-25 (8th Cir. 2014) (holding that an officer was entitled to qualified immunity when the officer "grabbed [plaintiff's] arm, twisted it upward and behind [plaintiff's] back, and then threw [plaintiff] to the floor" in the course of applying handcuffs because this is "a relatively common and ordinarily accepted non-excessive way to detain an arrestee").

Further, there is no robust consensus of persuasive authority that would put one on notice that Engelstad's actions were unlawful. To the contrary, in *Nolin v. Isbell*, 207 F.3d 1253 (11th Cir. 2000), the Eleventh Circuit Federal Court of Appeals opined that an even greater use of force on a non-fleeing and non-resisting arrestee was reasonable and that the force and injury alleged "sounded little different from the minimal amount of force and injury involved in a typical arrest." *Id.* at 1258 n.4.

For these reasons, even if Engelstad's actions did amount to excessive force, Engelstad would be entitled to qualified immunity.

III. ENGELSTAD DID NOT COMMIT A BATTERY.

To establish liability for a battery claim against an on-duty peace officer, a plaintiff must demonstrate that the officer used excessive force. *Paradise v. City of Minneapolis*, 297 N.W.2d 152, 155 (Minn. 1980). Engelstad did not use excessive force, and, therefore, did not commit a battery.

IV. ENGELSTAD WAS NOT NEGLIGENT.

Under Minnesota law, a peace officer has a common law duty to use reasonable care to avoid foreseeable harm. *See Holthusen v. United States*, 498 F. Supp. 2d 1236, 1243-44 (D. Minn. 2007). In order to prevail on a negligence claim, a plaintiff must demonstrate that the officer breached that duty, and that the breach caused the plaintiff to suffer damages. *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014) (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). Engelstad was not negligent. Engelstad used reasonable care when he arrested Heitzman, and even if he had not, Engelstad's use of force did not cause any of Heitzman's alleged injuries or damages. Heitzman's back and shoulder pain pre-existed her arrest, as evidenced by her chiropractic and other medical records. Heitzman's mental injuries also existed prior to the arrest, as she has a long-standing history of anxiety and depression. In fact, Heitzman's own treating psychiatrist testified at trial that Heitzman's distress was caused by the fact that she had been arrested, and that she would experience that distress regardless of the use of force.

V. ENGELSTAD IS ENTITLED TO OFFICIAL IMMUNITY.

Engelstad also is entitled to official immunity from Heitzman's battery and negligence claims. Government officials are entitled to official immunity from state law claims when "the official's duties require the exercise of discretion or judgment." *Dokman v. Cnty. of Hennepin*, 637 N.W.2d 286, 296 (Minn. Ct. App. 2001). Official immunity exists "to protect public officials from the fear of personal liability that might deter independent action." *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992). A public official only loses this protection if he or she "commits a willful or malicious wrong." *Elwood v. Rice Cnty.*, 423 N.W.2d 671, 677 (Minn. 1988).

A. Engelstad's actions were discretionary.

Generally, a peace officer's duties are considered to be discretionary and, therefore, covered by official immunity. *Kelly v. City of Minneapolis*, 598 N.W.2d 657, 664 (1999); *see also Stepnes v. Ritschel*, 771 F. Supp. 2d 1019, 1042 (D. Minn. 2011). During his interaction with Heitzman, Engelstad used his professional, discretionary judgment in deciding whether to arrest Heitzman and how to take her into custody. Engelstad had to consider the facts he was presented with and evaluate whether he had probable cause to arrest her and the amount of force needed to place her in handcuffs. These decisions are discretionary.

B. Engelstad's actions were not willful or malicious.

In the context of official immunity, "[m]alice is defined as 'the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right.'" *Dokman,* 637 N.W.2d at 296 (quoting *Rico v. State,* 472 N.W.2d 100, 107 (Minn. 1991)). An act is not considered willful or malicious unless the public official "intentionally commits an act that he or she then has reason to believe is prohibited." *Id.*

None of Engelstad's actions can be classified as willful or malicious. Engelstad used minimal force to put Heitzman in handcuffs and take her into custody. Engelstad had no reason to believe that handcuffing Heitzman in the manner he did was unlawful or violated Heitzman's rights.

Heitzman's allegation that Engelstad arrested her in retaliation for her family's involvement in a dispute with Engelstad's wife is not supported by the evidence. There was no evidence that Engelstad knew who Heitzman was until after she was arrested and in handcuffs. Therefore, even if Engelstad's actions constituted negligence, Engelstad has official immunity.

NOW, THEREFORE, the Court herewith makes the following:

ORDER FOR JUDGMENT

Judgment shall be entered in favor of Defendant Officer Scott Engelstad.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 20, 2015

EVERETT & VANDERWIEL, P.L.L.P

s/Anna L. Yunker
Pamela L. VanderWiel, No. 305960
Anna L. Yunker, No. 392551
2930 146th Street West, Suite 115
Rosemount, MN 55068
anna@e-vlaw.com
(651) 209-9692

Attorneys for Defendant